THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.12063 of 2005

Dated 15-12-2005

Between:

M. Subba Rao.

..... PETITIONER

AND

The District Collector(Excise), Krishna District, and two others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.12063 of 2005

O R D E R:

Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

The petitioner seeks a writ of Mandamus declaring the alleged action of the respondents 2 and 3 in not opening the sealed tender submitted by the petitioner for allotment of the retail out let at Shop No.174 of Gopavaram Village, Musunur Mandal, Krishna District, as arbitrary and illegal.

As can be seen from the material on record, a notification was published on 26-05-2005 in Krishna District for allotment of I.L. Shops in form A4 for the year 2005-2006 in accordance with the provisions of the Andhra Pradesh Excise (Lease of Right of selling by shop and conditions of Licences) Rules, 2005 (for short 'the Rules'). The petitioner states that in pursuance of the same, he submitted his tender for shop No.174 complying with all the requirements and the tenders were opened on 03-06-2005. The grievance of the petitioner is that the respondents have not opened his tender and in spite of the objection raised by him, they failed to take the same into consideration. It is also pleaded that he quoted a sum of Rs.12,56,999/- for shop No.174 at Gopavaram of Krishna District, which is the highest bid and therefore, the respondents are not justified in not opening his tender and not considering the same. Hence, this writ petition.

On behalf of the respondents, the Inspector (Prohibition & Excise), Nuzvid, filed a counter-affidavit stating that on 02-06-2005 the shops noted up to Gazette serial number 160 were auctioned. It was announced in the auction hall several times that the auction for the remaining shops noted at Gazette serial numbers 161 to 335 will be examined on 03-06-2005 and the tenderers were requested to attend to the same place on 03-06-2005 at 9-00 A.M. Accordingly, on 03-06-2005 the auction was commenced at 9-15 A.M. by the District Revenue Officer, Krishna, from the Gazette Sl.No.161 onwards. The shop at Gazette No.174 of Gopavaram Village, Musnur Mandal was auctioned at about 10-00 A.M. on 03-06-2005. So far as the said shop was concerned, eight tenders were received, however on 03-06-2005, only four tenderers have furnished 10% of Earnest Money Deposit drawn in favour of the Collector and the remaining four tenderers, including the petitioner, did not attend to the auction hall and also failed to furnish E.M.D. of 10%. Hence, the said four tenders were rejected and the same were not opened. The tender of one K.S. Chowdary, S/o Shivaram Krishna, who quoted a sum of Rs.12,22,999/- against the upset price of Rs.3,50,000/-, was found to be the highest bid and accordingly the same was accepted and the said shop was allotted to him. Subsequently at about 10-30 A.M., the petitioner came and represented that he could not attend to the auction hall at the time of auction due to vehicle failure and requested to consider his case. Since by that time the bid was already finalised, the request of the petitioner could not be considered.

Having heard the learned counsel for the petitioner and having perused the material on record, I do not find any substance in the contention raised by the petitioner.

It is relevant to note Rule 14 (5) of the Rules, which reads as follows:

> *"The tenderer, at the time of auction, shall be required to furnish as earnest money a sum equal to 10% of upset price fixed and notified by the auctioning authority for each shop notified for auction, in the form of demand draft(s) obtained from a scheduled bank in*

favour of auctioning authority or in favour of Commissioner of Prohibition and Excise before opening the tender. If, the tenderer does not furnish earnest money, such tender shall be forthwith rejected by the auctioning authority before opening the sealed tenders offered for that shop."

A perusal of the said Rule makes it clear that at the time of the auction the tenderers shall furnish earnest money equal to 10% of upset price in the form of demand draft and submit the same to the Auctioning Authority before opening the tenders and if the tenderer does not furnish earnest money, his tender shall be forthwith rejected by the Auctioning Authority before opening the sealed tenders.

In the circumstances, since it is clear from the counter-affidavit filed by the respondents that the petitioner was not present on 03-06-2005 at 10-00A.M. by which time, the shop No.174 was auctioned and did not furnish the earnest money deposit as required under Rule 14 (5) of the Rules, I am of the opinion that the respondents cannot be found fault with in not opening the tender of the petitioner. The said action is in accordance with the statutory rules and therefore, interference by this Court is not warranted.

However, the petitioner filed a reply-affidavit disputing the version of the respondents. On the basis of the same the learned counsel for the petitioner vehemently contended that the petitioner was very much present at the time of auction on 03-06-2005 and had also purchased a demand draft towards E.M.D. of 10%, but the respondents did not open his tender. It is a pure disputed question of fact which cannot be enquired into and decided by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. If the petitioner is still aggrieved it is always open to him to work out the appropriate common law remedy.

Accordingly, the writ petition, which is devoid of merits, is dismissed. No costs.

(G. ROHINI, J)

Date:15 -12-2005

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